

Application No. 10/730,783
Amdt. Dated January 25, 2007
Reply to Office Action of August 25, 2006

REMARKS/ARGUMENTS

1. Remarks on the amendment

Claims 1, 7 and 9 have been amended to more specifically define Applicant's claimed invention. Claims 6 and 8 have been canceled without prejudice.

Antecedent basis of the amendment can be found on page 24, the first and second paragraphs, of the Specification as filed. Applicants respectfully submit no new matter has been introduced by the amendments.

2. Response to the Rejections of Claims 1-5 and 7-10 Based Upon 35 USC §102(b)

Claims 1-5, 7 and 9-10 stand rejected under 35 U.S.C. §102(b) as being anticipated by Komer (U.S. 5,773,422). This rejection is respectfully traversed by the amendment.

For there to be anticipation under 35 U.S.C. §102, "each and every element" of the claimed invention must be found either expressly or inherently described in a single prior art reference. *Verdegaal Bros vs. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) and references cited therein. See also *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 1581, 230 USPQ 81, 84 (Fed. Cir. 1986) ("Absence from the reference of any claimed element negates anticipation."); *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). As pointed out by the court, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). An anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of the invention. *ATD Corp V. Lydall, Inc.*, 159 F.3d 534, 545, 48 USPQ 2d 1321, 1328 (Fed. Cir. 1998). See also *In re Spada*, 911 F.2d 705, 708, 15 USPQ ed 1655, 1657 (Fed. Cir. 1990).

Application No. 10/730,783
Amdt. Dated January 25, 2007
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As positively recited in the amended independent Claims 1 and 7, Applicant's claimed dermatological composition consisting essentially of an avermectin compound in an amount effective to treat transient acantholytic dermatitis, acne miliaris necrotica, acne varioliformis, perioral dermatitis, acneiform eruptions, acne vulgaris, or seborrheic dermatitis, and a carrier, wherein the effective amount is in a concentration range from about 0.05% to about 0.075% (w/v).

Applicant submits that the claimed subject matter is not disclosed, taught or suggested by the art of record. More specifically, Komer fails to teach Applicant's claimed dermatological composition consisting essentially of from about 0.05% to about 0.075% (w/v) of an avermectin compound.

As specifically described in the instant Specification, Applicant's claimed composition containing a low concentration of an avermectin compound is clinically effective in treating transient acantholytic dermatitis, acne miliaris necrotica, acne varioliformis, perioral dermatitis, acneiform eruptions, acne vulgaris and seborrheic dermatitis.

Applicant has specifically described that a low concentration of avermectin compound is advantageous because it reduces risks of adverse side effects, and reduces the possibility of triggering body's autoimmune responses (page 22, last paragraph of the Specification).

Moreover, Applicant has further described that some of the diseases, such as perioral dermatitis, the skin on the eyelids can be affected. To treat eyelids, a high concentration of the medicine should be avoided to prevent irritation of the eyes. It is found that a 0.075% ivermectin lotion does not cause eye irritation when it is used on the face, around the eyes, or directly on the eyelids (page 20, last paragraph of the Specification).

On the contrary, Komer specifically teach to use N-methylpyrrolidone, 2-pyrrolidone or mixtures thereof to provide higher concentrations of avermectin composition to be more effective against parasites. It is apparent that Komer's composition and its function are substantially different from Applicant's claimed composition.

Therefore, the reference fails to anticipate or suggest Applicant's claimed

Application No. 10/730,783
Amdt. Dated January 25, 2007
Reply to Office Action of August 25, 2006

invention.

With regard to Claims 2-5 and 9-10, these claims are dependent upon independent Claims 1 and 7. Under the principles of 35 U.S.C. §112, 4th paragraph, all of the limitations of each independent claim are recited in its respective dependent claims. As described above, independent Claims 1 and 7 is not anticipated by the prior art of record, as such Claims 2-5 and 9-10 are submitted as being allowable over the art of record.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claims 1-5, 7 and 9-10 under 35 U.S.C. §102(b) based on Komer.

2. Response to the Rejections of Claims 1-10 Based Upon 35 USC §102(b)

Claims 1-5, 7 and 9-10 stand rejected under 35 U.S.C. §102(b) as being anticipated by Miller (U.S. 5,728,719). This rejection is respectfully traversed by the amendment.

Applicant submits that the claimed subject matter is not disclosed, taught or suggested by Miller.

Miller teaches a composition comprising pyriproxifen or a combination of pyriproxifen and avermectin for protecting animals from parasites.

Miller fails to teach Applicant's claimed dermatological composition consisting essentially of an avermectin compound and a carrier. Therefore, this reference fails to anticipate or suggest Applicant's claimed invention.

With regard to Claims 2-5 and 9-10, these claims are dependent upon independent Claims 1 and 7. Under the principles of 35 U.S.C. §112, 4th paragraph, all of the limitations of each independent claim are recited in its respective dependent claims. As described above, independent Claims 1 and 7 is not anticipated by the prior art of record, as such Claims 2-5 and 9-10 are submitted as being allowable over the art of record.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claims 1-5, 7 and 9-10 under 35 U.S.C. §102(b) based on Miller.

Application No. 10/730,783
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3. Response to the Rejections of Claim 6 Based Upon 35 USC §103 (a)

Claim 6 has been canceled without prejudice. Therefore, this rejection is moot.

It is respectfully submitted that Claims 1-5, 7 and 9-10, the pending claims, are now in condition for allowance and such action is respectfully requested.

Applicant's Agent respectfully requests direct telephone communication from the Examiner with a view toward any further action deemed necessary to place the application in final condition for allowance.

1/25/2007
Date of Signature

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